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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6 JOSEPH VIGIL,

7 Plaintiff,

8 v.

9 SGT. MAGUIRE, *et al.*,

10 Defendants.

Case No.: 3:18-cv-00424-MMD-WGC

ORDER

Re: ECF No. 36

11 Before the court is Plaintiff's Motion for Appointment of Counsel (ECF No. 36). Plaintiff
12 bases his motion on the fact that (1) he is unable to afford counsel, (2) his incarceration will greatly
13 limit his ability to effectively litigate his case, (3) the substantive issues and procedural matters in
14 this case are too complex for Plaintiff's comprehension and abilities, and (4) Plaintiff has limited
15 access to the law library. Plaintiff also contends he "has limited education having had to attend
16 'special classes' throughout his entire time in school (never achieving any sort of degree) and
17 suffering ADHD." (*Id.* at 1, 2.)

18 While any *pro se* inmate such as Mr. Vigil would likely benefit from services of counsel,
19 that is not the standard this court must employ in determining whether counsel should be appointed.
20 *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

21 A litigant in a civil rights action does not have a Sixth Amendment right to appointed
22 counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The United States Supreme
23 Court has generally stated that although Congress provided relief for violation of one's civil rights

1 under 42 U.S.C. § 1983, the right to access to the courts is only a right to bring complaints to
2 federal court and not a right to discover such claims or even to litigate them effectively once filed
3 with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

4 In very limited circumstances, federal courts are empowered to request an attorney to
5 represent an indigent civil litigant. The circumstances in which a court will grant such a request,
6 however, are exceedingly rare, and the court will grant the request under only extraordinary
7 circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986);
8 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

9 A finding of such exceptional or extraordinary circumstances requires that the court
10 evaluate both the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to
11 articulate his claims in light of the complexity of the legal issues involved. Neither factor is
12 controlling; both must be viewed together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015,
13 1017 (9th Cir. 1991), *citing Wilborn, supra*, 789 F.2d at 1331. Plaintiff has shown an ability to
14 articulate his claims. (ECF Nos. 1, 3, 4, 7, 10, 13, 14, 24, 25, 26, 29, 30, 32, 35, 36.)

15 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

16 If all that was required to establish successfully the
17 complexity of the relevant issues was a demonstration of
18 the need for development of further facts, practically all
19 cases would involve complex legal issues. Thus,
20 although *Wilborn* may have found it difficult to
articulate his claims *pro se*, he has neither demonstrated
a likelihood of success on the merits nor shown that the
complexity of the issues involved was sufficient to
require designation of counsel.

21 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying
22 the request for appointment of counsel because the Plaintiff failed to establish the case was
23 complex as to facts or law. 789 F.2d at 1331.

1 The substantive claim involved in this action is not unduly complex. Plaintiff's First
2 Amended Complaint was allowed to proceed on Plaintiff's Eighth Amendment excessive force
3 claim against Defendant Maguire. (ECF No. 9 at 9.)

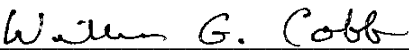
4 Similarly, with respect to the *Terrell* factors, Plaintiff has failed to convince the court of
5 the likelihood of success on the merits of his claims. In fact, Plaintiff sets forth no argument
6 whatsoever about the alleged merits of his case or why he is likely to succeed against the one
7 defendant who is remaining in this case, i.e., Sgt. Maguire.

8 The court does not have the power "to make coercive appointments of counsel."
9 *Mallard v. U. S. Dist. Ct.*, 490 US 296, 310 (1989). Thus, the court can appoint counsel only under
10 exceptional circumstances. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) [cert den 130
11 S.Ct. 1282 (2010)]. Plaintiff has not shown that the exceptional circumstances necessary for
12 appointment of counsel are present in this case.

13 In the exercise of the court's discretion, it **DENIES** Plaintiff's Motion for Appointment of
14 Counsel (ECF No. 36).

15 **IT IS SO ORDERED.**

16 Dated: April 13, 2020.

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18 WILLIAM G. COBB
19 UNITED STATES MAGISTRATE JUDGE
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